

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

WYE ELECTRIC, INC.

and

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL UNION
NOS. 446, 480 AND 576**

**Cases 15-CA-11993
15-CA-12013
15-CA-12076-2
15-CA-12094
15-CA-12094-2
15-CA-12215**

ORDER

The Charging Parties' Request for Review of the Acting General Counsel's decision affirming the Acting Regional Director's compliance determination is denied. The Charging Parties argue that the simultaneous application of *Oil Capitol Sheet Metal, Inc.*¹ and *Rome Electrical Systems, Inc. d/b/a Three Rivers Electrical, Inc.*² under the circumstances of this case was arbitrary and capricious, and that the Board should order the Acting Regional Director retroactively to apply the compound interest formula set out in *Kentucky River Medical Center*.³

We deny review because we find that the Acting Regional Director did not reduce the discriminatees' backpay under *Oil Capitol*. While the Acting Regional Director's summary of the basis of her compliance determination began with a citation of *Oil Capitol*, the summary of the compliance investigation does not suggest that backpay was reduced based on the General Counsel's failure to carry the burden of proof that

¹ 349 NLRB 1348 (2007), pet. for review dismissed 561 F.3d 497 (D.C. Cir. 2009).

² 356 NLRB No. 38 (2010) (the Board's policy, announced in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), that monetary awards shall be calculated using compound interest does not extend to cases in compliance when *Kentucky River* issued).

³ *Supra*, note 2.

was shifted onto the General Counsel by that decision. Rather, the Acting Regional Director explained:

The compliance investigation disclosed that, if hired and retained by the Respondent, most of the discriminatees would have continued to work and would have agreed to transfer to other Respondent worksites as long as they continued to be employed for sufficient hours or work, or at least until they found higher-paying employment elsewhere. The payroll records reflect that comparable employees worked on an ongoing basis through October 1993. As such, the Region determined that the backpay period should end at that time.

The Acting General Counsel's letter denying the Charging Parties' appeal further explained, "[a]s the Employer presented compelling evidence that there was no more suitable project work for the discriminatees after October 1993, the compliance determination is consistent with the Board's pre-*Oil Capitol* caselaw permitting an Employer to rebut a presumption of an indefinite backpay period." The Charging Parties do not dispute that statement in the Acting General Counsel's letter or otherwise explain how the application of *Oil Capitol* reduced any of their backpay in this case. Thus, the Charging Parties' argument that the retroactive application of *Oil Capitol* combined with the application of *Three Rivers Electrical* rather than *Kentucky River Medical Center* was arbitrary and capricious is simply inapposite.

Accordingly, we conclude that the Charging Parties have failed to establish a sufficient basis for reversing the Acting Regional Director's compliance determination.

Dated, Washington, D.C., September 21, 2011.

MARK GASTON PEARCE, CHAIRMAN

CRAIG BECKER, MEMBER

BRIAN E. HAYES, MEMBER